IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.412/2005

Sanjeev Kumar @ Babbi Bhatnagar S/o Mohan Swaroop
...Accused-Appellant
Versus
State of Rajasthan
...Respondent

2. S.B. Criminal Jail Appeal No.0544/2005

Sanjeev Kumar @ Babbi Bhatnagar S/o Mohan Swaroop
...Accused-Appellant
Versus
State of Rajasthan
...Respondent

Date of Judgment :::: 16th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Ali Mohammad Khan, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the State

By the Court:-

The matter was listed for orders on the application for suspension of sentence as bail-bonds of the appellant in pursuance of the order dated 10th January, 2006, were not received. The learned counsel for the appellant submits that he is not pressing the appeals on merits and looking to the quantity of contraband recovered from the possession of the appellant, both the appeals may be heard finally and his sentence may be reduced.

The learned Public Prosecutor has no objection in case both the appeals are heard and disposed of finally.

With the consent of both the parties, the appeals are heard finally and being disposed of.

These two appeals, on behalf of accused-appellant Sanjeev Kumar @ Babbi Bhatnagar S/o Mohan Swaroop – one through counsel and another through Superintendent, Central Jail, Kota, are directed against the judgment and order dated 18.3.2005 passed by the Court of Judge, N.D.P.S. Cases, Baran (District & Sessions Judge, Baran), in Sessions Case No.31/2003, therefore, both the appeals are being disposed of by this common judgment.

The trial court has convicted and sentenced the accused-appellant under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') to undergo 10 years rigorous imprisonment and a fine of Rs.1,00,000/-; in default of payment of fine, to further undergo one year's additional rigorous imprisonment.

The learned counsel for the appellant did not challenge the order of conviction in view of the recovery of contraband made from the possession of the appellant, which is proved from the prosecution evidence; his only prayer is that smack weighing 5 gram and 150 milligram was recovered from his

possession, whereas the learned trial court awarded him 10 years rigorous imprisonment, which is excessive looking to the quantity of contraband. He further submits that the accused-appellant has already remained in jail for about 2 years and three months, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned Public Prosecutor, in view of the fact that the order of conviction of the appellant has not been challenged, has not seriously opposed the prayer of learned counsel for the appellant for reduction of sentence of imprisonment.

I have heard the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

The learned counsel for the appellant has not challenged the order of conviction passed by the trial court, therefore, it is not necessary to refer and discuss the facts of the case, in detail. The charge against the appellant was that smack weighing 5 gram and 150 milligram was recovered from his possession on 29th January, 2003. The Parliament has amended the provisions of the NDPS Act with effect from 2nd October, 2001, and in exercise of powers conferred by clause (viia) and (xxiiia) of Section 2 of the NDPS Act, a Notification came to be issued vide order No.S.O.1055, Dated 19.10.2001, whereby a Table was

appended to the NDPS Act describing the small and commercial quantity of the contraband. Item No.56 of the Table relates to heroin/smack (diacetylmorphine) and therein the small quantity of smack has been notified as 5 gram and commercial quantity has been prescribed as 250 gram. The cases where contravention involves small quantity, the Legislature has prescribed maximum sentence of six months or with fine, which may extend to ten thousand rupees, or with both; and in case where the contravention involves lesser than commercial quantity but greater than small quantity shall be punishable with rigorous imprisonment for a term which may extend to ten years and with fine, which may extend to one lakh rupees. There is no dispute that the present case relates to the period after the amendment came into force and the amended provisions are applicable in the present case. The contravention involves 5 gram smack is punishable with rigorous imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees, or with both. In the present case the contravention found in possession of the accused was weighing 5 gram and 150 milligram, therefore, 150 milligram smack was found in excess otherwise the case would have fallen within small quantity. The trial court has awarded a sentence of 10 years rigorous imprisonment which is excessive and cannot be said to

be justified and the same is liable to be reduced.

After considering all the facts and circumstances of the case, I think it fit and proper that ends of justice will meet in case the appellant is awarded sentence of 2 years and 6 months rigorous imprisonment with a fine of ten thousand rupees; in default of payment of fine, to further undergo 1 month's additional rigorous imprisonment.

Consequently, both the appeals are partly allowed. The order of conviction of the appellant passed by the trial court is upheld, but the order of sentence passed by the trial court is modified and the appellant is awarded the sentence of 2 years and 6 months rigorous imprisonment and a fine of ten thousand rupees; in default of payment of fine, to further undergo one month's additional rigorous imprisonment.

(Narendra Kumar Jain) J.

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